



Navigating Legal Challenges to CBM Projects

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**US EPA CMOP
Roundtable Meeting:
Coal Mine Methane
Carbon Finance
Opportunities**

**Arlington, VA
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About Van Ness Feldman

- Energy, environmental, and natural resources law firm
- One of two US climate change practices to received highest possible rating
 - Chambers International (2008)
- One of top three US emissions trading practices
 - *Environmental Finance* magazine, 2007-2008
- Counsel to the Coalition for Emission Reduction Projects
 - Coalition of project developers, financiers, energy companies, and industrials
 - Focused on development of offsets policy in cap-and-trade legislation (www.uscerp.org)

Overview

- Addressing uncertainties
 - Who owns the methane?
 - What is the division of labor, risks and benefits
 - Is this an offsets project?
 - What are the standards, rules, and procedures?

Who owns the methane?

■ Possible claimants

- Surface owner or mineral rights owner
 - Severed estate?
- Which mineral rights owner?
 - Split estate?
 - Mine lease holder
 - Oil and gas lease holder
- Claimants could be private, state government, federal government

■ Legal strategy options

- *Due diligence*
- Address concerns of other estate holders

What is the division of labor, risks, and benefits?

■ Possible roles

- Just carbon off-take
 - Compliance market only?
 - Voluntary market?
- Marketing of credits
- Project developer
- Ownership of other benefits of methane (electricity, natural gas)

■ Different types of roles/benefits imply different types of risks

- Environment, safety, health regulation
- Energy regulation

■ Legal strategy options

- Define roles/benefits
- Be prepared to distribute risks and responsibilities

Policy and politics on offsets

■ Opposition

- Concerns about ensuring environmental benefits
- Remove pressure on energy sector

■ Policy design issues

- Early action limits
- Limits on use of offset credits
- Uncertainties about eligible project types
- Uncertainties about standards
- Approval and verification process
- Administration of the program

■ Legal strategy options

- Educate policy-makers and regulators

Is CMM an offsets project?

■ Anticipating future regulation:

- Is CCM an offset project?
- Or are coal mines subject to allowance regulation?

■ Examples:

- Lieberman-Warner Climate Security Act of 2008
 - “Covered entity” includes “any entity that . . . **uses** more than 5,000 metric tons of coal”
- Climate MATTERS Act (Doggett)
 - Expressly refers to CMM projects as offset projects

■ Legal strategy options

- Ensure contract covers all kinds of potential carbon value
 - Voluntary credits
 - Compliance offset credits
 - Avoided allowance costs

What standards and procedures apply?

- Voluntary market?
- Pre-compliance market?
 - State, regional, federal
- Issues
 - Additionality
 - Third party verification
 - Early action (*could be limited*)
- Legal strategy options
 - Incorporate flexibility on standards
 - Require continued cooperation
 - Create optionality as rules take shape

How does “delivery” occur?

- Registries are still emerging
- Future compliance registry is unknown
- Legal strategies
 - Use of documents to transfer rights
 - Provide for future flexibility on accounts

Conclusions

- CMM is subject to uncertainties and risks
- Legal strategy
 - Address ownership issues
 - Distribute responsibilities and resulting risks/benefits
 - Incorporate flexibility to address emerging policies
 - Require continued cooperation
 - Optionality on price, timing and form of delivery
 - Monitor policy developments
 - Influence policy developments



For more information

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For weekly news and analysis about climate change policy and business developments, go to:

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